

TRUST REORGANIZATION

UPHOLDING THE UNITED STATES' TRUST RESPONSIBILITY TO INDIAN NATIONS

- *Reorganization Should Not Create a Centralized Bureaucracy*
- *Do Not Fund Trust Reform Efforts on the Backs of Tribal Programs*
 - *Support Indian Land Consolidation*

STATUS OF TRUST REFORM

It is widely known that the Department of Interior has grossly mismanaged Indian trust funds and trust lands. The Secretary of the Interior is faced with a mandate from Congress to clean up the accounting and management of Indian trust funds, and by a lawsuit alleging a significant failure of the Secretary's trust responsibility for Indian lands. The federal court in *Cobell v. Norton* recently ordered the Department to produce a historic accounting by 2007 and develop a trust reform plan for the future that complies with ordinary trust standards. This order is on appeal. In response, the Secretary has moved forward with a unilateral plan to reorganize the Department of Interior and reengineer the trust processes—but the reorganization underway does not address a number of concerns advanced by tribal leaders, who know best what works and does not work in trust management at the local level.

WHAT TRIBAL GOVERNMENTS WOULD LIKE CONGRESS TO DO

1. **Reorganization Should Not Create a Centralized Bureaucracy** - The ongoing reorganization of the Bureau of Indian Affairs is creating a top-heavy bureaucracy that does not meet the real need for trust management on the reservations. Trust management requires people and systems on the ground in resource management, inspections, enforcement, appraisals, probate, and title. This work cannot be done solely by bureaucrats and accountants in Washington, DC or Albuquerque. Each region and reservation has unique needs, and tribes in each region of the country are preparing plans to make the reorganization funding more effective and equitable.

The President's request for the FY 2005 budget demonstrates our concerns. The largest increase proposed for the BIA is for Central Office Operations, which would rise by \$45.9 million – a whopping 52% increase – for total funding of \$134.4 million. The Office of Special Trustee, which does only accounting and oversight, would receive a \$113.6 million increase – to \$322.7 million. \$109 million would be directed toward a historical accounting without acceptable parameters on how to undertake this extraordinary complex task. None of the new funding for trust reorganization would address the management problems on the ground in Indian country.

2. **Don't Punish Indian Programs and Services** - While the central offices see enormous increases, the overall BIA budget request drops \$52 million from the 2004 enacted level, and Indian Education gets hammered - a \$65 million cut. Tribal leaders have repeatedly emphasized that funding needed to correct problems and inefficiencies in DOI trust





management must not come from existing BIA programs or administrative monies—yet once again, this year's budget request reduces effective funding for tribes to fund a reorganization that tribes have opposed. It is critical that the Department request and receive additional funding from Congress to correct the internal problems created through their administrative mistakes rather than depleting existing BIA programs.

3. **Support Indian Land Consolidation Act Amendments** - While tribes disagree with the Administration on reorganization, we strongly agree on S. 1721, the Indian Land Consolidation Act amendments. S. 1721 is critical legislation for addressing the problem of fractionation, which creates an accounting nightmare and enormous difficulties for owners in putting land to beneficial use. S. 1721 will tackle this problem by providing a new federal probate code for trust property that will limit fractionation and promote estate planning. The bill will also allow tribes and individual owners to acquire and consolidate highly fractionated interests, and it expands and makes permanent the federal land acquisition program. Land consolidation addresses the root of the problem, will improve federal administration and management, and saves a great deal of federal money that is currently spent tracking tiny interests.
4. **Encourage Settlement and Don't Buy Into Quick Fix Legislation that Would Diminish the Trust Responsibility of the Department of Interior.** Congress should support settlement discussions that are now in their early stages between the Cobell plaintiffs and the Department of Interior and avoid quick fix legislation. There is a long history of financial mismanagement, the honor of the United States is on the line, and Congress needs to stand firm for a fair and just resolution.
5. **Take up legislation next year to affirm the trust standards.** Congress should begin hearings to consider legislation that would reaffirm the standards for management of Indian trust land. For decades, the Interior Department's primary focus has been on avoiding liability, and as a result, the Department has consistently undermined any effort to take corrective action on trust reform. Once the Department understands that mismanagement will no longer be tolerated, the system will change and true reform will begin. In effect, the Department is acting as a bank for Indian trust funds -- and just like every other bank in the U.S., the Department of Interior must be subject to standards and oversight by the courts.
6. **Continue to support tribal self-determination.** The survival of tribal cultures and traditions depends upon the continuance of tribal lands as places to live and be Indian. The primary role of the trustee is to protect the long-term viability of tribal lands and resources and ensure that the actions of the trustee are consistent with tribal control of use and development of Indian lands. The future of trust management includes increased protection and tribal control over lands and resources—and a federal system that provides technical assistance and trust oversight over resource management in a flexible arrangement driven by self-determination in light of the special circumstances, legal and treaty rights of each tribe and reservation.